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# The Three Strikes Reform Act of 2006.

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# THE COCHRAN FIRM

## LOS ANGELES

SA2005RFD125

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JOHNNIE L. COCHRAN, JR.  
CHAIRMAN

November 14, 2005

**VIA FEDERAL EXPRESS**

Office of the Attorney General  
ATTN: Tricia Knight, Initiative Coordinator  
1300 I Street  
Sacramento, CA 95814

**RECEIVED**  
NOV 15 2005

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary, Three Strikes Reform Act of 2006

Dear Mr. Attorney General:

Please find enclosed a text of the proposed initiative, titled The Three Strikes Reform Act 2006, and a check for \$200.00 made payable to the Department of Justice. Please return a filed stamped copy of the initiative in the enclosed self addressed envelope.

Thank you very much for your attention to this matter.

Very truly yours,

THE COCHRAN FIRM

BRIAN T. DUNN

BTD:rr

**THE THREE STRIKES REFORM ACT OF 2006****INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of the State of California, residents of the afore-described County (or City and County), hereby propose amendments to Penal Code Sections 667, 667.1, 1170.12, and 1192.7, relating to the sentencing of individuals for serious or violent felonies who have been previously convicted of serious or violent felonies, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory initiative reads as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1. TITLE**

This initiative shall be known as may be cited as the Three Strikes Reform Act of 2006.

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California do hereby find and declare that:

(a) Proposition 184 (the "Three Strikes" law) was overwhelmingly approved in 1994 with the intent of protecting law-abiding citizens by enhancing the sentences of repeat offenders who commit serious and/or violent felonies;

(b) Proposition 184 did not exclusively apply enhanced sentences to repeat offenders who have committed serious and/or violent felonies;

(c) Proposition 184 did not set reasonable limits to determine what criminal acts to prosecute as second and/or third strikes;

(d) Since its enactment, Proposition 184 has been used to enhance the sentences of more than 35,000 persons who did not commit a serious and/or violent crime against another person, at a cost to taxpayers of more than eight hundred million dollars (\$800,000,000.00) per year.

**SECTION 3. PURPOSES**

The People do hereby enact this measure to:

1. (a) Continue to protect the people from repeat offenders who commit serious and/or violent crimes;
- (b) Ensure greater punishment and longer prison sentences for those who have been previously convicted of serious and/or violent felonies.

#### **SECTION 4. AMENDMENTS TO SECTION 667 OF THE PENAL CODE**

(This format presents struck wording in [*italics and strikeout*] and new wording in [***bold italics.***])

Section 667 of the Penal Code is hereby amended to read:

#### **§ 667. Habitual criminals; Enhancement; Exceptions**

(a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, "serious felony" means a serious felony listed in subdivision (c) of Section 1192.7, ***as amended by this Act.***

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the ~~Legislature~~ ***people of the State of California*** in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a ***serious and/or violent*** felony ***offense*** and have been previously convicted of serious and/or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a ***serious and/or violent*** felony and it has been pled and proved that the defendant has one or more prior ***serious and/or violent*** felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent ***serious and/or violent*** felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior ***serious and/or violent*** felony conviction and the current ***serious and/or violent*** felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one ***serious and/or violent*** felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious ***and/or violent*** felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a ***serious and/or violent*** felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7, ***as amended by this Act***, as a serious felony in this state, ***provided that any crimes which may be punishable as misdemeanor offenses pursuant to Penal Code Section 17(b), shall not constitute serious and/or violent felonies for purposes of this Act.*** The determination of whether a prior conviction is a prior ***serious and/or violent*** felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior ***serious and/or violent*** felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular ***serious and/or violent*** felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular ***serious and/or violent*** felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 ***as amended in this Act***.

(3) A prior juvenile adjudication shall constitute a prior ***serious and/or violent*** felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2), as a felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior ***serious and/or violent*** felony conviction:

(1) If a defendant has one prior ***serious and/or violent*** felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current ***serious and/or violent*** felony conviction.

(2) (A) If a defendant has two or more prior ***serious and/or violent*** felony convictions as defined in subdivision (d), that have been pled and proved, the term for the current ***serious and/or violent*** felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(i) Three times the term otherwise provided as punishment for each current ***serious and/or violent*** felony conviction subsequent to the two or more prior ***serious and/or violent*** felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has a prior ***serious and/or violent*** felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior ***serious and/or violent*** felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on ***November 1, 2005, or as amended by this Act.***

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

**SECTION 5. AMENDMENTS TO SECTION 667.1 OF THE PENAL CODE**  
(This format presents struck wording in *[italics and strikeout]* and new wording in ***bold italics.***)

§ 667.1. References in Section 667 to existing statutes

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they ***are amended by this act.*** ~~*existed on the effective date of this act, including amendments made to those statutes by this act.*~~

**SECTION 6. AMENDMENTS TO SECTION 1170.12 OF THE PENAL CODE**  
(This format presents struck wording in *[italics and strikeout]* and new wording in ***bold italics.***)

§ 1170.12. Aggregate and consecutive terms for multiple convictions; Prior conviction as prior felony; Commitment and other enhancements or punishment

(a) Notwithstanding any other provision of law, if a defendant has been convicted of a ***serious and/or violent*** felony and it has been pled and proved that the defendant has one or more prior ***serious and/or violent*** felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an an aggregate term limitation for purposes of consecutive sentencing for any subsequent ***serious and/or violent*** felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior ***serious and/or violent*** felony conviction and the current ***serious and/or violent*** felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one ***serious and/or violent*** felony count not committed on the same occasion, and not arising from the same set of operative facts, the court



shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a ***serious and/or violent*** felony shall be defined as:

(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (c) of Section 1192.7, ***as amended by this Act***, as a serious felony in this state, ***provided that any crimes which may be punishable as misdemeanor offenses pursuant to Penal Code Section 17(b), shall not constitute serious and/or violent felonies for purposes of this Act.*** The determination of whether a prior conviction is a prior ***serious and/or violent*** felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior ***serious and/or violent*** felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison. A prior conviction of a particular ***serious and/or violent*** felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of the particular ***serious and/or violent*** felony as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior ***serious and/or violent*** felony conviction for the purposes of sentence enhancement if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense, and

(B) The prior offense is

(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or

(ii) listed in this subdivision as a ***serious and/or violent*** felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior ***serious and/or violent*** felony conviction:

(1) If a defendant has one prior ***serious and/or violent*** felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current ***serious and/or violent*** felony conviction.

(2)(A) If a defendant has two or more prior ***serious and/or violent*** felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for ***the*** current ***serious and/or violent*** felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of

(i) three times the term otherwise provided as punishment for each current ***serious and/or violent*** felony conviction subsequent to the two or more prior ***serious and/or violent*** felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior ***serious and/or violent*** felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(e) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7, ***as amended by this Act***. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (d).

***(f) If any provision of subdivisions (a) to (e), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.***

***(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.***

## **SECTION 7:           AMENDMENTS TO SECTION 1192.7 OF THE PENAL CODE**

Cal Pen Code §§ 1192.7 (2005)

### **§§ 1192.7. Limitation of plea bargaining**

(a) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney ~~or judge~~, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney ~~or judge~~

relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, "serious felony" means any of the following:

- (1) Murder or voluntary manslaughter;
- (2) mayhem;
- (3) rape;
- (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (6) lewd or lascivious act on a child under the age of 14 years;
- (7) any felony punishable by death or imprisonment in the state prison for life;
- (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
- (9) attempted murder;
- (10) assault with intent to commit rape or robbery;
- (11) assault with a deadly weapon or instrument on a peace officer;
- (12) assault by a life prisoner on a noninmate;
- (13) assault with a deadly weapon by an inmate;
- (14) arson;
- (15) exploding a destructive device or any explosive with intent to injure;
- (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- (17) exploding a destructive device or any explosive with intent to murder;
- (18) ***any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary;***
- (19) robbery or bank robbery;
- (20) kidnapping;
- (21) holding of a hostage by a person confined in a state prison;
- (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- (23) any felony in which the defendant personally used a dangerous or deadly weapon;
- (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or

any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code;

(25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;

(26) grand theft involving a firearm;

(27) carjacking;

(28) any felony offense which would also constitute a felony violation of Section 186.22;

(29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of Section 220;

(30) throwing acid or flammable substances, in violation of Section 244;

(31) assault with a deadly weapon, firearm, machine gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245;

(32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Sections 245.2, 245.3, or 245.5;

(33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of Section 246;

(34) commission of rape or sexual penetration in concert with another person, in violation of Section 264.1;

(35) continuous sexual abuse of a child, in violation of Section 288.5;

(36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034;

(37) intimidation of victims or witnesses, in violation of Section 136.1;

(38) criminal threats, in violation of Section 422;

(39) any attempt to commit a crime listed in this subdivision other than an assault;

(40) any violation of Section 12022.53;

(41) a violation of subdivision (b) or (c) of Section 11418; and

(42) any conspiracy to commit an offense described in this subdivision.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking

association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

## **SECTION 8: RE-SENTENCING OF QUALIFIED INDIVIDUALS**

No person who is presently serving a term of imprisonment for a "second strike" conviction pursuant to Penal Code Section 667(e)(1) or Penal Code Section 1170.12(c)(1) shall be subject to re-sentencing under this section or its associated subdivisions.

(a) Subject to the exclusions and limitations set forth below in subdivisions (b),(c) and (d), any person serving an indeterminate term of life imprisonment imposed pursuant to Penal Code Section 667(e)(2) for conviction of a felony that is not classified as a "violent felony" by Penal Code Section 667.5(c) as amended by this Act, and any person serving an indeterminate term of life imprisonment imposed pursuant to Penal Code Section 1170.12(c)(2) for conviction of a felony that is not classified as a "serious felony" by Penal Code Section 1192.7(c) as amended by this Act, shall be re-sentenced within 180 days of the effective date of this Act to a determinate term that is twice the term otherwise provided as punishment for the current felony conviction.

(b) Subject to the exclusions set forth below in subdivision (c) and (d) any person who has a prior conviction for any of the offenses set forth in (i) through (iii) of this subdivision and is presently serving an indeterminate term of life imprisonment imposed pursuant to Penal Code Section 667(e)(2) for a conviction of a felony that is not defined as a "violent felony" by Penal Code Section 667.5(c) as amended by this Act, or is serving an indeterminate term of life imprisonment imposed pursuant to Penal Code Section 1170.12(c)(2), for a conviction of a felony that is not classified as a "serious felony" by Penal Code Section 1192.7(c) as amended by this Act, shall, within 180 days of the effective date of this Act, have the minimum term of his or her sentence modified to twice the term otherwise provided as punishment for the current felony conviction, so that after service of the minimum term as modified, such persons shall not be immediately released, but shall be eligible for parole. The Board of Prison Terms shall, in considering parole for persons with a prior conviction for any of the offenses set forth below,

consider all statements and recommendations submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, and shall provide notices under Section 3042, and recommendations of other persons interested in the granting or denying of the parole. The Board shall enter on its order granting or denying parole to these prisoners, the fact that the statements and recommendations have been considered by it.

(i) a “sexually violent offense” as defined by Welfare and Institutions Code Section 6600(b);

(ii) murder in the second degree;

(iii) felony murder, *i.e.*, a murder committed in the perpetration of, or attempt to commit, one of the offenses enumerated in Penal Code Section 189.

(c) Any person who has a prior conviction for any of the following shall be excluded from subdivision (a) and shall be excluded from subdivision (b):

(i) Murder in the first degree as defined by Penal Code Section 189, except where the conviction was for felony murder, *i.e.*, a murder committed in the perpetration of, or attempt to commit, one of the offenses enumerated in Penal Code Section 189, as specified above in subdivision (b)(iii);

(ii) oral copulation with another person who is under 14 years of age, and who is more than 10 years younger than he or she, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Penal Code Section 289(j);

(d) Any person who has more than one prior conviction for any of the following shall be excluded from subdivision (a) and shall be excluded from subdivision (b):

(i) a “sexually violent offense” as defined by Welfare and Institutions Code Section 6600(b);

(ii) lewd and lascivious acts involving children, in violation of Penal Code Section 288.

(e) No person who is presently serving a term of imprisonment for a “second strike” conviction imposed pursuant to Penal Code Section 667(e)(1) or Penal Code Section 1170.12(c)(1), shall be covered by the re-sentencing provisions of this section and its subdivisions.

(f) Other than as provided for above in subdivision (a) and (b) of this Section, the amendments to Section 667.5(c) and the amendments to Section 1192.7(c) effected by this Act shall have no retroactive effect and shall in no circumstances be the basis for changing the classification of a prior conviction under Section 667.5(c) or under Section 1192.7(c).

## **SECTION 9: LIBERAL CONSTRUCTION**

This Act is an exercise of the public power of the People of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be

liberally construed to effectuate those purposes.

#### **SECTION 10: SEVERABILITY**

The provisions of this Act are severable. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

#### **SECTION 11: CONFLICTING MEASURES**

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be self-executing and given the full force of law.

#### **SECTION 12: EFFECTIVE DATE**

This Act shall become effective immediately upon its approval by the voters.

#### **SECTION 13: SELF-EXECUTION**

This Act shall be self-executing.

#### **SECTION 14: AMENDMENT**

This Act shall not be altered or amended except by one of the following:

- (a) By statute passed in each house of the Legislature, by roll call entered in the journal, with two-thirds of the membership and the Governor concurring, or
- (b) By statute passed in each house of the Legislature, by roll call vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot, and with the majority of the electors concurring, or
- (c) By statute that becomes effective when approved by a majority of the electors.